

LUXEMBOURG

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Article 56 and Article 56*bis* of the modified law as of 4th December 1967 concerning income tax ("LITL")

- Article 56 LITL provides a definition of the arm's length principle which is in line with Article 9 (1) of the OECD Model Tax Convention on Income and on Capital (MTC).
- Article 56*bis* LITL exposes the different transfer pricing criteria in order to determine an arm's length price, following the 2017 OECD Transfer Pricing Guidelines and in accordance with BEPS actions 8-10.

2. Reference to the OECD Transfer Pricing Guidelines

Reference to the OECD Transfer Pricing Guidelines is explicitly made in the commentaries on Articles 56 and 56*bis* LITL of the bill 7050 as well as in the Circular LIR 56/1 – 56*bis*/1 of 27th December 2016 containing specific guidance for the pricing of intra-group financing transactions.

3. Definition of related parties

The definition of related parties in Article 56 LITL follows the one provided by Article 9 (1) of the MTC.

4. Transfer pricing methods

National legislation does not prescribe the use of any specific transfer pricing method. Nevertheless, following the OECD transfer pricing guidance, the selection of a transfer pricing method should always aim at finding the most appropriate method for a particular case, in order to arrive at a result in accordance with Article 56 LITL and Article 56*bis* LITL.

5. Transfer pricing documentation requirements

Following the Law of 23th December 2016, implementing the Directive 2016/881 of 25th May 2016 (amending the Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation) into Luxembourg law (Country-by-Country Reporting law), every ultimate parent entity resident for tax purposes in Luxembourg or any other reporting entity which falls under the scope of the law, is required to provide a country-by-country (CbC) report in accordance with the specifications provided in the annex of the law.

Furthermore, there is a documentation obligation for any transaction that is relevant for the computation of taxable income (§ 171 of the General Tax Law). This documentation obligation is also extended to intercompany transactions, meaning that every taxpayer subject to the provisions of the arm's length principle in the LITL has to document how the arm's length price has been determined. No specific form is required by law.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

According to the Country-by-Country Reporting law, cases of non-compliance with CbC reporting may trigger a penalty up to EUR 250,000.

7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-lu.pdf

Remark: Information provided under point 9 of the preceding document is outdated. For any information on dispute resolution, reference should be made to point 8 of the present document.

8. Information on dispute resolution

Competent Authority	<p>Ms. Pascale TOUSSING Director of the direct tax administration Phone : +352 247-52101 E-mail: comite_de_direction@co.etat.lu</p> <p>Ms. Monique ADAMS Deputy director of the direct tax administration Phone : +352 247-52102 E-mail: comite_de_direction@co.etat.lu</p> <p>Mr. Luc SCHMIT Deputy director of the direct tax administration Phone : +352 247-52103 E-mail: comite_de_direction@co.etat.lu</p> <p>Ms. Betty SANDT Deputy director of the direct tax administration Phone : +352 247-52104 E-mail: comite_de_direction@co.etat.lu</p> <p>Mr. Sven ANEN Deputy director of the direct tax administration Phone : +352 247-52105 E-mail: comite_de_direction@co.etat.lu</p> <p>Administration des contributions directes Address: 45, boulevard Roosevelt, L-2450 Luxembourg Postal address: L-2982 Luxembourg Fax: +352 247-52440</p>
Organization	The Economic Division is the authority empowered to negotiate APA's and MAP's in the field of Transfer Pricing.
Scope of MAP & MAP APA	Resolution and prevention of double taxation.
Domestic guidelines & administrative arrangements	<p>MAP: Circular Conv. D.I. n°60 dated 28th August 2017 containing MAP guidance https://impotsdirects.public.lu/dam-assets/fr/legislation/legi17/lg-convdi-60.pdf</p> <p>APA: Circular LIR 56/1 – 56bis/1 of 27th December 2016 containing specific guidance for the pricing of intra-group financing transactions https://impotsdirects.public.lu/dam-assets/fr/legislation/legi16/circulairelir561-56bis1-27122016.pdf</p>
Time for filing	<p>MAP: generally within the 3 years following the first notification which leads to a taxation not in accordance of a tax treaty. This period may vary depending on the applicable tax treaty.</p> <p>APA: no specific time for filing an APA.</p>

Form of request	No specific form is required.
Documentation requirement	MAP: Information on the documentation required can be found in the Circular Conv. D.I. n°60 dated 28 th August 2017 APA: Information on the documentation required can be found in the Grand Ducal Decree of 23 th December 2014 (see also point 9 of the present document) as well as in the Circular LIR 56/1 – 56bis/1 of 27 th December 2016.
User fees	MAP: not applicable. APA: According to §29a of the General Tax Law, an administrative fee of 10.000 EUR will generally be applicable for an APA request.
Tax collection / penalty / interest	Interest and penalties are not treated in Luxembourg as part of the taxes covered by a tax treaty so that they do not fall within the scope of the MAP. However, when a tax due in Luxembourg is adjusted as a result of a MAP, the interest and penalties that are in relation with the adjusted tax are in principle cancelled or adjusted proportionally.
Other dispute resolution mechanisms	Apart from the tax treaties including clauses equivalent to Article 25 (5) of the MTC, arbitration is available under the EU Arbitration Convention.
Government Website	https://impotsdirects.public.lu

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Luxembourg on Article 8 of the Arbitration Convention (*Official Journal L 225, 20/08/1990 P. 0010 – 0024*).

"Luxembourg considers to be a 'serious penalty' what the other Contracting State considers to be so for the purposes of Article 8."

9. Relevant regulations on Advance Pricing Arrangements

§29a of the General Tax Law

(http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A---N_-257-du-24-decembre-2014.pdf)

Grand Ducal Decree as of 23th December 2014

(http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi14/Memorial-A---N_-264-du-29-decembre-2014.pdf)

Circular LIR 56/1 – 56bis/1 of 27th December 2016 containing specific guidance for the pricing of intra-group financing transactions

(<https://impotsdirects.public.lu/dam-assets/fr/legislation/legi16/circulairelir561-56bis1-27122016.pdf>)

10. Links to relevant government websites

Luxembourg Tax Administration:

<http://www.impotsdirects.public.lu>

11. Other relevant information

Further relevant information can be found in the Transfer Pricing Country Profile of Luxembourg published on the OECD website (<http://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-luxembourg.pdf>).

In October 2018, the EU Joint Transfer Pricing Forum (JTPF) published a report on a coordinated approach to transfer pricing controls within the EU (https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf_report_on_a_coordinated_approach_to_transfer_pricing_controls_within_the_eu_en.pdf).

Information on Luxembourg's current status regarding national provisions in relation with TP audit controls within the EU can be found on page 25 of the report.